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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR      | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|---------------------------|---------------------|------------------|
| 09/707,610      | 11/07/2000  | Christopher M. Hofmeister | 118-P-005           | 9906             |

7590 11/16/2006

ANDRUS, SCEALES, STARKE & SAWALL, LLP  
100 EAST WISCONSIN AVENUE  
SUITE 110  
Milwaukee, WI 53202

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| EXAMINER |
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STEPHENS, JACQUELINE F

|          |              |
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| ART UNIT | PAPER NUMBER |
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3761

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/707,610

Applicant(s)

HOFMEISTER ET AL.

Examiner

Jacqueline F. Stephens

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 8/28/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 31-59 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-30 is/are allowed.
- 6) ☐ Claim(s) 1-13 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/21/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-13 and 15-19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 1-13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawarizadeh et al. USPN 5903222 in view of Fisher et al. USPN 5557263.

As to claims 1 and 11, Kawarizadeh discloses a wetness monitoring system 10, 20, 40, comprising a sensor, conductors, absorbent material 18 extending between the conductors, a data collector comprising a compiling processor 92, electric circuit 14,24, communication device 89, and power source (col. 9, lines 2-24). The system further comprises a control station having a receiver 89, control processor 82, and an associated memory containing a predetermined wetness value (col. 6, line 8 through col. 7, line 27). Kawarizadeh discloses the sensor is to be used with a diaper worn by the individual (col. 3, lines 39-42). Kawarizadeh does not disclose a data collector.

Fisher discloses a wetness detection device having a data collector 178,183 for the benefits of providing the means to assemble and calculate statistical data for correlation with outer data concerning individual patients or groups of patients. Fisher teaches for example medical histories of patients may be stored in a database for retrieval to evaluate patient progress and efficiency of patient care (Fisher col. 9, lines 60-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Kawarizadeh with a data collection device for the benefits taught in Fisher.

As to claims 2-10 and 12, the limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed

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invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

As to claim 13, see col. 3, lines 60-65.

As to claim 15, see col. 3, lines 60-65, where the sensor is removed and attached to another dry garment. Thus, the sensor inherently has a fastener to enable it to be attached to the garment.

As to claim 16, see col. 5, lines 45-60.

As to claims 17 and 18, see Figures 1 and 2.

As to claim 19, see col. 13, lines 9-16.

#### ***Allowable Subject Matter***

4. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 20-30 are allowed. The following is a statement of reasons for the indication of allowable subject matter: The overall claimed combination of a method of detecting wetness comprising the steps of using a sensor to detect wetness values, collecting data from the sensor, periodically generating and transmitting wetness measurement data, comparing the data with a predetermined value, in combination with the claimed apparatus is neither anticipated nor rendered obvious by the prior art of record.

### ***Conclusion***


5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Primary Examiner  
Art Unit 3761

November 13, 2006